Hovsepian v. Apple, Inc.

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EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: ACACIA MEDIA TECHNOLOGIES CORPORATION.	) C-05-01114-JW
	) MARCH 7, 2008
	) PAGES 1-72

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S:

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BENEFIT AND TO GIVE YOU THE BENEFIT OF A RECORD OF OUR PROCEEDINGS TO HELP YOU ALONG IN THE FURTHER PROCEEDINGS FOLLOWING THIS CONFERENCE.

AND I WANT TO EXPRESS THE COURT'S APPRECIATION, IT'S A CONTINUING EXPRESSION, FOR YOUR COOPERATING TOGETHER TO PROVIDE THE COURT WITH THE BENEFIT OF YOUR MEETING AND CONFERRING WITH EACH OTHER TO TRY AND GET AS CLOSE AS YOU CAN TO A JOINT PROPOSAL.

IT DOES, IT DOES YOU AND YOUR CLIENT'S WELL WHEN THAT OCCURS. AND IT DOESN'T SURPRISE ME AT ALL THAT THERE CAN BE AREAS WHERE THERE'S DISAGREEMENT. AND IT HELPS TO HAVE EVEN THE DISAGREEMENT LAID OUT BEFORE ME.

SO WHAT I WANT TO, TO DO HERE THIS MORNING IS, IS TO SET UP A SCHEDULE FOR WHERE WE GO FROM HERE AND IN DOING THAT THERE ARE TWO PARTS OF WHAT I READ FROM THE PARTIES THAT I WOULD GIVE YOU PRELIMINARY REACTIONS TO.

THE FIRST IS I SEE AN INTENT TO GO THROUGH A STAGE OF MOTIONS DIRECTED TO WHETHER OR NOT THERE IS A BASIS FOR GRANTING SUMMARY JUDGMENT ON THE GROUND THAT CERTAIN OF THE PATENTS ARE INVALID.

AND I WANT TO ENCOURAGE YOU TO TRY THAT, BUT I DON'T WANT YOU TO DO IT UNLESS YOU BELIEVE THAT THERE IS A STRONG POSSIBILITY THAT, THAT THERE WOULD BE A BASIS FOR THE COURT HOLDING UNDISPUTED FACTS THAT A CLAIM IS EITHER VALID OR INVALID.

IT, IT -- AND I SEE BOTH KINDS OF MOTIONS, THOSE BY THE PATENT OWNER SEEKING TO HAVE THE COURT DECLARE THE VALIDITY, AND THOSE BY THE DEFENDANTS SEEKING TO HAVE THE COURT DECLARE INVALIDITY. AND THE STANDARDS ARE HIGH, AND, THEREFORE, IT HAS TO MEET THAT HIGH STANDARD.

AND MORE OFTEN THAN NOT I THINK OF THAT ISSUE AS ONE THAT REQUIRES EVIDENCE, EXPERT OPINION EVIDENCE. AND IT'S VERY DIFFICULT, UNLESS THE PARTIES AGREE ON WHAT THAT EXPERT OPINION EVIDENCE IS, TO SEE A CIRCUMSTANCE WHERE THE COURT WOULD, WOULD TAKE THAT AWAY FROM A JURY AND MAKE A FINDING.

NOW, THERE'S SOME INVALIDITY ISSUES THAT ARE DECIDED BY THE COURT SITTING WITHOUT A JURY AND MAYBE THOSE COULD BE PARSED OUT AND I WOULD TAKE A DIFFERENT ATTITUDE ABOUT IT.

BUT I JUST WANT TO ALERT YOU TO THAT CONCERN SO YOU MIGHT SPEAK TO THAT.

THERE IS NO LISTING HERE, OF COURSE, OF WHAT THOSE MOTIONS ARE AND WHAT THE -- WHICH ONES

CONSTRUED TO INCLUDE THE ELEMENTS DESCRIBED IN THE CLAIMS, AND EACH CLAIM WHERE TRANSMISSION SYSTEM APPEARS THE ELEMENTS SEQUENCE ENCODER AND ID ENCODER ARE THERE; AND, LASTLY, THERE'S ONE OR TWO CLAIMS WITH RESPECT TO THE MEANS.

MR. BLOCK: YEAH.

MR. DORMAN: THERE'S MEANS LANGUAGE THAT ALSO THAT YOU HAVE CONSTRUED TO INCLUDE A TRANSMISSION SYSTEM. SO BY VIRTUE OF THAT CONSTRUCTION -- IN A SENSE WE'RE DONE.

IN A SENSE WE NO LONGER HAVE A CASE OF CONTROVERSY BECAUSE WHAT YOU HAVE -- WHAT YOU HAVE DETERMINED TO DATE DISPOSES OF THE CASE.

WE COULD RIGHT NOW, WITHOUT FURTHER WORK FROM YOU, STIPULATE TO A SUMMARY JUDGMENT OF INVALIDITY AS ALL OF THOSE CLAIMS ON INDEFINITE GROUNDS AND THAT WOULD THEN DISMISS, WITHOUT PREJUDICE, EVERY OTHER ISSUE. WE'RE CONCLUDED, WE'RE UP ON APPEAL, THERE'S NO CERTIFICATION REQUIRED. IT'S A FINAL JUDGMENT. THE WORK OF THIS COURT IS DONE. OKAY. THAT IS ONE APPROACH.

NOW, THAT WAS THE APPROACH THAT THE PLAINTIFFS PREFERRED.

WHAT THE DEFENDANTS THEN SAID WAS, WELL, HOLD ON, HOLD ON. IF WE'RE GOING TO GO UP, LET'S

GET AS MANY ISSUES UP THAT WE CAN GET UP. AND THERE ARE MANY ISSUES WITH RESPECT TO THE THINGS THAT THE COURT HAS SAID IN THE SIX CLAIM CONSTRUCTION ORDERS THAT BEAR ON NOT ONLY INDEFINITENESS BUT ENABLEMENT ISSUES, WRITTEN DESCRIPTION ISSUES, AND, AND THOSE, BECAUSE WE'RE -- WE HAVE STAYED DISCOVERY AND THESE ARE PURELY LAW AND MOTION MATTERS RELATING TO THE SPECIFICATION. AND WHAT IS APPARENT FROM THE PATENT DOCUMENTS, WE OUGHT TO CONSIDER THOSE, TOO.

NOW, WE'RE AMENABLE TO THAT, AND THAT'S INCLUDED IN THIS PROPOSAL. THAT'S MORE WORK FOR YOU. I DON'T THINK IT'S NECESSARY. BUT WE'RE AMENABLE TO THAT IF THAT'S WHAT THE COURT WANTED TO DO AND WANTED TO CONSIDER.

BUT EVEN IN THAT CIRCUMSTANCE, AFTER WE HAD THESE MOTIONS AND THESE STIPULATIONS, BECAUSE WE WOULD ENDEAVOR, BASED UPON WHAT YOU HAVE SAID, TO STIPULATE TO SOME OF THESE ISSUES AND NOT REQUIRE THE COURT TO CONSIDER FURTHER MOTIONS ON SOME OF THESE ISSUES.

WHEN THAT WAS CONCLUDED WE WOULD THEN STIPULATE TO A FORM OF SOME SUMMARY JUDGMENT TO BE ENTERED RESERVING OUR APPEAL RIGHTS. AND AGAIN IT WOULD NOT BE A CERTIFICATION ISSUE. IT WOULD BE A

CRITICAL.

YOU KNOW, ID ENCODER, SEQUENCE ENCODER, TRANSMISSION SYSTEM, THESE THREE TERMS FUNDAMENTALLY ARE GOING TO DEFINE THIS CASE AND WHETHER THERE IS OR IS NOT INFRINGEMENT.

AND ALL OF THOSE TERMS ARE GOING TO BE REVIEWED BY THE FEDERAL CIRCUIT IF WE PACKAGE THIS AND SEND IT UP TODAY WITHOUT FURTHER WORK.

SO THAT WOULD BE OUR PROPOSAL.

THE COURT: THANK YOU, COUNSEL.

ANYONE ELSE WANT TO SPEAK TO THIS?

MR. HERSHKOWITZ: GOOD MORNING, YOUR HONOR. BEN HERSHKOWITZ FROM GOODWIN PROCTER REPRESENTING CSC HOLDINGS AND SPEAKING ON BEHALF OF THE CABLE AND INTERNET DEFENDANTS THAT HAD SIGNED ONTO THAT SUPPLEMENTAL STATEMENT FILED EARLIER THIS WEEK.

I THINK BEFORE WE GET TO THE FOUR SPECIFIC ISSUES THAT YOU RAISED, IT'S IMPORTANT TO UNDERSTAND THAT, THAT WHERE THE PARTIES SEEM TO ALL AGREE BECAUSE I DO THINK IT HELPS DEFINE THE ISSUES THAT YOU HAVE LAID OUT.

AND WE ALL AGREE THAT WE WOULD LIKE TO RESOLVE THIS CASE IN A TIMELY AND EFFICIENT MANNER, AND THERE'S JUST SIMPLY DISAGREEMENT ABOUT HOW TO

EFFECTIVELY AND EFFICIENTLY DO THAT.

ALL PARTIES AGREE THAT THE 112 MOTIONS SHOULD BE CONSIDERED IN THE NEXT PHASE. AND SO TO ADDRESS YOUR QUESTION AS TO IS THERE -- THE STANDARD IS HIGH FOR SUMMARY JUDGMENT AND YOU WANT TO UNDERSTAND THAT THERE'S A STRONG POSSIBILITY THAT YOU'LL BE ABLE TO GRANT THOSE SUMMARY JUDGMENT MOTIONS.

WELL, YOU HEARD FROM ACACIA ALREADY THAT IT ACKNOWLEDGES THAT THE STANDARD WILL BE MET FOR A SUBSTANTIAL NUMBER OF THESE MOTIONS ALREADY AND IT'S WILLING TO STIPULATE.

THERE ARE OTHERS WHICH WE DON'T KNOW WHETHER THEY'LL STIPULATE TO OR NOT BUT WE ALSO BELIEVE THAT WE'LL MEET THAT HIGH STANDARD AND WHICH WILL ALLOW THIS COURT TO COMPLETELY AND FULLY DISPOSE OF EACH AND EVERY ASSERTED CLAIMS ON ALL OF THE PATENTS AT THIS TIME WITHOUT ADDITIONAL WORK THAT NEEDS TO FLOW OUT OF THAT.

THE OTHER POINT IS THAT THE PARTIES HAVE AGREED ON A SCHEDULE TO GO FORWARD WITH THESE 112 MOTIONS.

AND ACACIA HAS AGREED WITH ALL OF THE DEFENDANTS ON THAT. AND THE DISAGREEMENT ON SCHEDULE COMES DOWN TO ACACIA HAS STATED THAT IT

TO ADDRESS THE COURT, I'M PERSUADED THAT THE JOINT PROPOSAL OF WHAT I WOULD CALL THE PLAINTIFFS AND THE CABLE DEFENDANTS AND OTHERS, THE NONSATELLITE DEFENDANTS HAS A GREAT DEAL OF MERIT BOTH IN TERMS OF JUDICIAL ECONOMY AND IN TERMS OF HOW THE ISSUES IN THE CASE WOULD BE FRAMED.

I'M YET -- I'M NOT YET COMMITTING TO ANY PROCESS THAT WOULD CERTIFY THE CASE FOR APPEAL, BUT AS I HEARD MR. DORMAN'S STATEMENT, IT COULD BE THAT I WOULDN'T NEED TO DO THAT.

AND SO THE CLOSER YOU CAN GET ME TO A MOTION WHERE I FIND THAT I HAVE ADJUDICATED THE CASE ON THE MERITS BY A PRELIMINARY PRETRIAL MOTION, THAT IF I'M REVERSED, THERE WOULD BE MORE TO BE DONE, BUT IF I'M NOT, THAT'S THE END OF THE CASE. THAT SOUNDS TO ME AS THOUGH, AS THOUGH IT HAS A GREAT DEAL OF VALUE AND I WOULD WANT TO HEAR MORE ABOUT THAT.

IT ALSO OCCURS TO ME THAT, THAT HOW YOU, YOU -- HOW YOU STATE THE PLAINTIFF'S POSITION IS VERY IMPORTANT AND, AND AT SOME POINT I NEED TO HAVE MORE DETAIL ON HOW YOU'RE PLANNING TO GO ABOUT THIS.

YOUR INTRODUCTION WAS THAT YOU COULD STIPULATE, BUT YOU HAVEN'T. AND WHAT I HEARD IS

THAT THERE MIGHT BE A DEFENSE MOTION, BUT DO YOU PROPOSE TO, TO FILE A STIPULATION AS A PART OF THIS PROCESS OR NOT? BECAUSE I DIDN'T GET THAT FROM THE JOINT STATEMENT.

MR. DORMAN: YOUR HONOR, I BELIEVE WHAT IS CONTEMPLATED IS THAT THE FIRST THING THAT IS GOING TO HAPPEN IF YOU ADOPT OUR AND THE CABLE INTERNET PROPOSAL INITIALLY THEY'RE GOING TO IDENTIFY TO US IN A MEET AND CONFER WHAT, WHAT FURTHER MOTIONS THEY WOULD BRING.

IN OTHER WORDS, WE BELIEVE THAT, THAT THIS COURT'S RULINGS TO DATE GIVE US THE BASIS OF THE FOLLOWING MOTIONS FOR SUMMARY JUDGMENT GIVEN THE COURT'S RULINGS ON INDEFINITENESS AND GIVEN THE COURT'S EXPRESSIONS OF, OF CLAIM CONSTRUCTION.

WHAT WE ARE THEN GOING TO DO IS LOOK AT THAT PROPOSAL, THAT LIST PROPOSAL AND MEET WITH THEM AND SAY, YOU KNOW, WE AGREE WITH YOU THAT BASED UPON WHAT THE COURT HAS DONE, THAT'S GOING TO BE THE RESULT SO THERE'S NO NEED TO FILE A MOTION ON THIS. THAT THAT'S GOING TO BE, BASED UPON THIS COURT'S RULING, THIS IS INVALID FOR THIS REASON.

AND WE THINK THERE'S GOING TO BE A LARGE NUMBER OF ISSUES THAT ARE LISTED IN THAT JOINT STATEMENT THAT ARE GOING TO BE THE SUBJECT OF

STIPULATION IN THAT REGARD.

THERE MAY BE SOMEWHERE WE THINK, YOU KNOW, THE PLAINTIFF SAYS HE DIDN'T GO THAT FAR. HE DIDN'T GO THAT FAR. THE COURT DIDN'T GO THAT FAR. YOU CAN'T MAKE THAT ARGUMENT, AND WE DISAGREE AS A MATTER OF LAW.

AND THEY'RE GOING TO HAVE A CHOICE TO SAY TO THEM WE'RE GOING TO FIGHT YOU ON THAT IF YOU BRING IT AND THEY MAY OR MAY NOT BRING IT.

SPEAKING FOR MYSELF ONLY, I'M PERSONALLY HOPEFUL THAT WE ARE GOING TO BE ABLE TO STIPULATE TO ENOUGH THAT THERE MAY BE NO SUMMARY JUDGMENT MOTIONS BEFORE YOU. THAT WE'RE CLEARLY GOING TO GET TO, I BELIEVE, A CIRCUMSTANCE WHERE, WHERE THERE'S A COMPLETE FINAL JUDGMENT.

WE MAY REQUIRE CERTIFICATION, WHICH UNDER THIS CIRCUMSTANCE, I THINK, WOULD BE ABSOLUTELY APPROPRIATE IN LIGHT OF YOUR MDL DUTIES, BUT MY OWN SUSPICION IS THAT THIS ENTIRE CASE IS GOING TO BE RESOLVED SUBJECT TO APPEAL JUST BY THIS PROCESS THAT WE'RE DOING. THAT'S MY VIEW.

THE COURT: I STILL DIDN'T HEAR FROM THAT, WHEN YOU GET THIS LIST OF MOTIONS AND FURTHER MOTIONS, YOU THEN WOULD RESPOND BY, BY INDICATING --

MR. DORMAN: WE WILL STIPULATE TO -- I MEAN, LET ME -- I'M ANTICIPATING BECAUSE YOU ASKED ME AND I DIDN'T ANSWER, I APOLOGIZE.

WE WILL PREPARE A STIPULATION AND PROPOSED ORDER THAT IF THESE MATTERS WERE BROUGHT BY MOTION, THE COURT WOULD ENTER JUDGMENT IN FAVOR OF THEM ON THESE BASES AND THAT WHILE WE'RE RESERVING OUR RIGHTS TO APPEAL, WE BELIEVE XYZ WAS ILLEGALLY ERRONEOUS, WE DON'T CONTEST THAT THAT WOULD BE THE RESULT, AND, THEREFORE, A JUDGMENT CAN BE ENTERED TO THAT EXTENT.

THAT'S WHAT WE PROPOSE TO DO AND THAT'S HOW THIS PROCESS WOULD OCCUR.

THE COURT: I SEE.

MR. DORMAN: WE WOULD FOLLOW THE PROPOSAL IN THE NYSTROM CASE, THE FEDERAL CIRCUIT CASE. AND IN THE BACK THERE'S A -- IT IS THE NYSTROM CASE, ISN'T IT?

MR. BLOCK: YEAH.

MR. DORMAN: THERE'S --

THE COURT: PART OF WHAT I WOULD WANT TO CONSIDER, AND I CAN ADDRESS IT IN MY ORDER FOLLOWING THIS CONFERENCE IS WHERE I COME INTO THE PROCESS.

I HAVE FOUND IT BENEFICIAL WHEN PARTIES,